

RESOLUTION NO. 14-160

A RESOLUTION AMENDING THE CRITERIA BY WHICH THE CITY OF WICHITA WILL CONSIDER INCENTIVES FOR DOWNTOWN DEVELOPMENT PROJECTS.

WHEREAS, Project Downtown: The Master Plan for Wichita was adopted by the City Council on December 14, 2010; and

WHEREAS, the Downtown Development Incentives Policy was adopted by the City Council on May 17, 2011; and

WHEREAS, the Downtown Development Incentives Policy establishes a program for public-private partnerships involving incentives that fund investments in infrastructure that is timed with and supportive of private investment, creates lasting public benefits, and facilitates additional private investment; and

WHEREAS, the criteria of the Downtown Development Incentives Policy need to be amended to improve processes.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The City Council hereby establishes the amended Downtown Development Incentives Policy as follows, which supersedes the policy approved May 17, 2011:

A. BACKGROUND AND PURPOSE. Project Downtown: the Master Plan for Wichita was adopted by the City Council on December 14, 2010, as the official policy guide for the revitalization of downtown Wichita. Project Downtown identifies that development in downtown often poses initial development costs that can be hard to address with solely with mechanisms like special assessment districts; façade improvements grants and financing; economic development incentive and industrial revenue bond based tax abatements; community improvement district financing; or lead and asbestos abatement financing that provide development incentives in other areas of Wichita. Therefore, Project Downtown recommends that the City of Wichita help overcome such obstacles to private investment by establishing a Downtown Incentives Policy that provides for a range of additional incentives in the form of public investments in downtown development projects that are timed with and supportive of private investment if a facet of the development involves creation of public assets that have lasting public benefits and facilitate additional private investment, and if the proposed public investment is investment in public assets such as parking, streetscaping, parks or other facilities with public benefit beyond the individual project. The purpose of the Downtown Development Incentives Policy is to outline the criteria by which the City of Wichita will consider such additional incentives for downtown development projects. Downtown

development projects are those projects located within the Project Downtown plan area.

B. APPLICABLE INCENTIVES. The Downtown Development Incentives Policy applies to requests for the following general public sources of funding (hereafter, “Downtown Development Incentives”) to be used in a downtown development project that involves creation of, and investment in, public assets with a lasting public benefit and facilitation of additional private investment:

- Tax Increment Financing (TIF)
- Hotel Guest Tax
- Forgivable Loans
- STAR Bonds
- Land
- Cash

The City’s other established incentive programs will remain available for downtown development projects but will not be subject to the requirements of this policy. Additionally, public projects to improve City assets that are funded through the City’s Capital Improvement Program or that are funded, at least partially, through Special Assessments will not be subject to the requirements of this policy, even if the project is partially funded through one or more of the incentives listed above.

C. PRELIMINARY REVIEW PROCESS. Prior to consideration by the City Council, parties intending to request Downtown Development Incentives must contact the Downtown Design and Innovation Center (DDIC) prior to submitting their request. The DDIC is a consultative undertaking between the Wichita Downtown Development Corporation and the City of Wichita responsible for assisting with the preparation of requests for Downtown Development Incentives. Parties requesting Downtown Development Incentives are required to participate in the preliminary review process established by the DDIC prior to submitting their request.

Once the developer has completed detailed design of the project, the project will be scheduled for design review by the DDIC. The developer will need to provide a site plan and perspective drawings in advance of the design review meeting. Developers and their design team will attend the design review meeting to present the project and answer questions from DDIC team. A dialogue regarding any design modifications needed for consistency with the design guidelines will occur, and the DDIC team will attempt to reach consensus regarding any design modifications with the developer. A written report outlining design modifications needed for consistency with the design guidelines will be provided to the developer following the design review meeting. The developer will provide a revised site plan and perspective drawings to the DDIC for confirmation of the design modifications. If the design modifications are unacceptable to the developer, an appeal to the City Manager may be filed. The City Manager will appoint a committee to hear and decide the appeal. In the event the

developer and committee are unable to reach agreement on the modifications, the developer may withdraw the proposal.

- D. SUBMITTAL REQUIREMENTS.** After completing the preliminary review process requirements, parties requesting Downtown Development Incentives must submit the information listed below. The City Manager, or other City Staff designated by the City Manager, will determine if the information provided is sufficient to undertake the evaluation process. If the City Manager, or other City Staff designated by the City Manager, determines that additional information is needed in order to undertake the evaluation process, parties requesting Downtown Development Incentives must submit such additional information as may be required by the City Manager, or other City Staff designated by the City Manager.

Project Summary

1. Project amount and purpose
2. Description of the redevelopment project, including details of how the proposed project meets the “Threshold Criteria” and the “Public Benefit Criteria” described in the “Evaluation Process” section below
3. Description of the proposed public-private partnership, including details of how the project partnership meets the “Threshold Criteria” and the “Business Plan Criteria” described below
4. Description of the development team, including details of how the development team meets the “Threshold Criteria” and the “Developer Background” criteria described below

Design Plan

1. Site Plan
2. Perspective Drawings

Business Plan

1. Market Analysis, including written description of plan to meet projections
2. Pro Forma, including written description of plan to meet projections
3. CEDBR Fiscal Impact Model (the developer is responsible for CEDBR’s fee for this service)
4. Source of capital, including:
 - a. Evidence of developer equity
 - b. Evidence of lender commitment
5. Amount and purpose of public investment sought
6. Repayment plan, if the City ordinarily requires a repayment plan or contingent repayment plan in connection with the type of incentive at issue
7. Backup repayment plan, including guarantors, if a repayment plan is required

Developer Background

1. Projected or existing financial statements (three years) for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

- c. If desired, financial statements may be submitted separately to a designated third party for analysis and summary report to the City.
2. History/ownership/legal structure of the business, including:
 - a. Certificate of Good Standing from the Secretary of State
 - b. Tax Clearance Certificate from the Department of Revenue
3. Experience of the development team, including:
 - a. Experience with similar projects
 - b. Number of projects completed by the development team
 - c. Past project experience with the City of Wichita
 - d. References, especially from other municipalities that have worked with the development team
4. Banking references, including:
 - a. Credit history reports, including past credit defaults (not required if the third party financial analysis option is selected)
 - b. Letters of good standing from previous lenders
5. Applicant Disclosure Questionnaire for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

Parties that do not want their financial statements disclosed publicly may submit their financial statements directly to a third party financial analysis consultant selected by the City. The third party financial analysis consultant will keep the financial statements confidential and will provide a summary report of their analysis of the financial statements to the City of Wichita, which analysis will in all cases address whether the financial statements were audited, whether the statements were accompanied by an auditor's opinion that they fairly presented the financial condition of the submitting party or parties, and whether any of the statements contained an auditor's note concerning material or fundamental uncertainty or actual doubt as to the subject's ability to continue as a going concern.

E. EVALUATION PROCESS. In considering a request for Downtown Development Incentives for a downtown development project, criteria will be evaluated regarding the public benefit of the project, the business plan for the project, and the developer's background and qualifications. An evaluation matrix (attached) will be used to evaluate projects on each criteria category. The evaluation matrix will be completed by an evaluation team that will collectively determine a single project score through team consensus. The evaluation team will be appointed by the City Manager and will include a diverse membership with representatives from the following:

- Downtown Revitalization Manager, Chairperson
- Urban Development Director
- Two private sector business representatives
- One lender
- Two Wichita Downtown Development Corporation staff/members
- Other subject matter experts as warranted by the project
- Management Analyst (non-voting), staff support

- Public Works/Engineering design representative (non-voting), staff support
- Finance Department representative (non-voting), staff support
- Law Department representative (non-voting), staff support

A project will need to receive 70% of the available points in each of the three criteria categories in order to be considered for Downtown Development Incentives. If the evaluation determines that Downtown Development Incentives should be considered, the resulting rating from the evaluation matrix will determine the required form of the guarantee for public revenue shortfall and the debt service coverage ratio for public financing. Higher rated projects will receive the more favorable terms. If requested, parties requesting Downtown Development Incentives may modify their proposal after the initial evaluation in order to improve the terms through a subsequent evaluation. Final approval of Downtown Development Incentives will be by the City Council.

The minimum threshold and categorical criteria upon which a request for Downtown Development Incentives will be evaluated are:

Minimum Threshold Criteria for the Developer

1. 10% equity
2. Guarantee for a proportional share of public revenue shortfall. For projects that involve multiple phases or developers, each phase or developer must provide a guarantee for a percentage of the public revenue shortfall proportional to that phase's or developer's portion of the overall project.
3. Letter of interest from primary lender or equity investor
4. Applicant Disclosure Questionnaire

Minimum Threshold Criteria for the Project

1. Consistency with Project Downtown's General Design Guidelines and Project Development Criteria. A Design Review Process has been established to determine a project's eligibility for this criterion.
2. Economic analysis confirms that the project is infeasible "but for" public investment.
3. Public investment is in a public asset as defined in Project Downtown.
4. Minimum private to public capital investment ratio of 2 to 1. For projects that involve multiple phases of private capital investment but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development.
5. Minimum public debt service coverage ratio of 1.2 to 1

Public Benefit/Compatibility with Overall Downtown Plan

1. Project Location/Design – Projects will be evaluated on the extent to which the project exceeds the General Design Guidelines and Project Development Criteria in the following four areas:

- a. Location – Project Downtown identifies priority locations such as Catalyst Sites and Walkable Development Focus Areas. Projects will be evaluated on the extent to which they utilize these priority locations in a manner that fosters additional development on properties surrounding the project site. Projects also will be evaluated on the ability to connect existing downtown districts and nodes and on impacts to the transportation system, such as providing a strategic walking connection to the river or accommodating a key transit stop.
- b. Design –The design of projects will be evaluated on the extent to which they exceed the minimum thresholds. Project Downtown encourages extraordinary design that contributes to Wichita’s identity as a community of distinction. Additionally, the Project Development Criteria identifies encouraged design features for each downtown district as “optional criteria.” Projects will be evaluated on the extent to which they contribute to community identity and include encouraged design features.
- c. Land Use/Project Type –The Project Development Criteria identifies encouraged land uses for each downtown district as “optional criteria.” Projects will be evaluated on the extent to which they include these encouraged land uses. Projects also will be evaluated on the extent to which they provide a new attraction, destination business, or major employer to the community.
- d. Other – Developers are encouraged to propose projects that further other priorities identified in Project Downtown. Projects will be evaluated on the extent to which they accomplish additional Project Downtown priorities.
2. Return on Public Investment – The extent to which a project’s return on public investment exceeds 1.3 to 1 on the Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model will be evaluated.
3. Public Purpose – Projects will be evaluated on the extent to which they accomplish the following public purposes:
 - a. Public asset serves developments beyond the project site
 - b. Project helps accomplish Project Downtown vision and strategies
 - c. Project enhances the community’s economic base
 - d. Project promotes sustainability
 - e. Other public benefits identified by the developer

Proposed Project Characteristics

1. Market Analysis – The project’s market analysis will be evaluated on the following criteria:
 - a. Extent that the current Project Downtown market analyses confirms project feasibility, or
 - b. Alternatively, confirmation of project feasibility by a separate third-party market analysis
2. Pro Forma – The project pro forma will be evaluated on the following criteria:
 - a. Rate of private investment return
 - b. Rents/prices consistent with performance of comparables
 - c. Projected rate of absorption consistent with performance of comparables
 - d. Long-term project solvency

3. Developer Equity – The amount and form of developer equity in the project will be evaluated.
4. Share of Public Funding – The extent to which private funding of the project exceeds the minimum threshold will be evaluated.
5. Lender Commitment – The financial stability of the lender and the form of lender commitment will be evaluated.

Current Experience and Creditworthiness of Developer

1. Financial Statements – The financial statements of the developer, development entity, key project partners, and guarantors will be evaluated on criteria such as the following:
 - a. Cash ratio of liquid assets to current liabilities
 - b. Debt/equity ratio
 - c. Debt service coverage ratio
 - d. Profit margin
 - e. Return on investment
 - f. Auditor's opinion on fairness of presentation
 - g. Auditor's opinion on appropriateness of going concern assumption
2. Developer Experience and Qualifications – The developer's qualifications and experience will be evaluated on the following criteria:
 - a. Developer credit history
 - b. Letters of good standing from previous lenders
 - c. Certificate of Good Standing from the Secretary of State and Tax Clearance Certificate from the Department of Revenue
 - d. Previous credit defaults by developer or key partners
 - e. Experience with similar projects
 - f. Number of projects completed by the development team
 - g. Past project experience with the City of Wichita
 - h. References, especially from other municipalities that have worked with the development team

F. DEVELOPMENT AGREEMENT REQUIRED. Concurrently with, or prior to, the approval of Downtown Development Incentives by the City Council, the City and the developer shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed downtown development project. The Development Agreement will include a site plan and elevation drawings or renderings of the project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of funds by the respective parties to pay for eligible project costs as well the responsibilities and milestones of the respective parties in project completion. The assignment of Development Agreement rights to any third party assignee will require prior written consent of the City, which may be granted or withheld at the sole discretion of the City.

- G. “GAP” FINANCING REQUIREMENT.** Approval of Downtown Development Incentives will require a financial analysis demonstrating that the project would not otherwise be possible without the use of the requested development incentive (“gap” analysis). Parties requesting Downtown Development Incentives will be required to provide the City pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources are not available to fund the entire cost of the project and still provide the developer a reasonable market rate of return on investment. The reasonableness of the rate of return on investment will be determined by dividing net operating income by development cost and comparing that rate to the overall capitalization rate for the land use(s) proposed. Parties requesting Downtown Development Incentives shall use current market conditions and input from local appraisers and lenders in determining the capitalization rate.
- H. BACKGROUND CHECK.** The City will conduct a background check on all parties requesting Downtown Development Incentives as well as all project partners. Parties requesting Downtown Development Incentives are required to furnish the City the personal and business information needed to carry out such a background check.
- I. CITY ADMINISTRATIVE FEES.** The City shall be paid a non-refundable application fee of \$8,500 with the formal submittal of a request for Downtown Development Incentives. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the third party financial analysis consultant for preparing a summary report of the applicant’s financial statements. The third party financial analysis consultant will be selected by the City through a competitive request for proposals process and will be “on call” to evaluate financial statements as applications are received. The fee charged by the third party financial analysis consultant will vary based on the complexity of the project with more complex projects requiring higher fees. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the Center for Economic Development and Business Research (CEDBR) to run the Fiscal Impact Model for the project.
- J. DESIGN GUIDELINES.** All projects must be consistent with Project Downtown’s General Design Guidelines and Project Development Criteria in order for it to be eligible for Downtown Development Incentives. Consistency of project design with the Project Downtown guidelines will be determined by the Downtown Design Resource Center (DDRC). Parties requesting Downtown Development Incentives must participate in the design review process established by the DDRC prior to submitting their request.

All property improvements commenced under a project supported by Downtown Development Incentives shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City’s

Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

K. ANNUAL REPORTING. Developers shall provide an annual report to the City no later than 30 days following the anniversary date of the Development Agreement. The annual report shall provide an account of all sources and uses of funds to pay private costs of the project. The City reserves the right to audit the account at its discretion and expense. The annual report also shall detail the developer's progress towards completing all responsibilities and milestones of project completion identified in the Development Agreement.

L. WAIVER OF POLICY. Should the City Council determine the terms of this policy inappropriate to evaluate a particular request for Downtown Development Incentives, it may, by majority vote, waive or modify the binding effect of this policy in regard to that project.

SECTION 2. The City Council directs the staff of the City of Wichita to use the established criteria in developing recommendations for future City Council action regarding incentives for downtown development projects.

ADOPTED by the governing body of the City of Wichita, Kansas, this 10th day of June, 2014.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(SEAL)

Approved as to Form:

Gary E. Rebenstorf, Director of Law